BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the matter of	)	
	)	CC Docket No. 02-33
Appropriate Framework for Broadband	)	
Access to the Internet over Wireline Facilities	)	

Comments of Cinergy Communications Company

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May 3, 2002

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Appropriate Framework for Broadband	)	
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COMMENTS OF CINERGY COMMUNICATIONS COMPANY

Cinergy Communications Company ("CCC") is a facilities-based Integrated Communications Provider. We offer local and long distance services and operate as an Internet Service Provider in the States of Kentucky, Indiana, and Tennessee. We also have plans to expand our territory to include Ohio, Illinois, Missouri, Mississippi and Florida. In this recessionary period, CCC is experiencing record sales and earnings, and CCC has materially increased the number of associates it employs. Our successful strategy of moderate, sustained growth based on earnings (as opposed to debt) is in jeopardy as a result of the FCC's proposed changes to Broadband policy. CCC is very concerned over the impact the proposed rule making will have on its business and its ability to continue the expansion of its business and employment.

The FCC is proposing to deregulate wireline Broadband internet services by redefining the nature of "last mile" Broadband transport from telecommunications service to information service. This proposed definitional change does not take into consideration Voice over Broadband (VoBB) technology, nor the associated jurisdictional issues. The stated objective of this rulemaking is to encourage investment in facilities to make Broadband services more widely available to the American public. For the reasons set forth in this memorandum, CCC is of the view that such deregulation will inhibit competition and result in the incumbent local exchange carriers eventually remonopolizing local voice service. Furthermore, this rulemaking is contrary to the spirit and intent of the Telecommunications Act of 1996 ("TA96").

I. Section 706 Grants State Commissions Concurrent Authority with the FCC over the Deployment of Advanced Telecommunication Services.

Section 706 (a) provides as follows:

> The Commission and each State Commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and

necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

Section 706(b) goes on to require the Commission to initiate a regular notice of inquiry to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. "If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."

The Commission has recently determined that Broadband deployment is currently proceeding on a reasonable and timely basis.[1] Since the Commission's inquiry made a positive rather than negative determination, it is unclear why immediate action is necessary or even warranted under Section 706. To the extent such encouragement is necessary, the Commission is directed under 706(a) to utilize a number of methods: "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

The Commission has not attempted price cap regulation. No case has been made for forbearance, most likely because forbearance would require an analysis of the competitive effects of such action.[2] There has not been any suggestion of imposing measures that promote competition in the local telecommunications market. Instead of encouraging Broadband development through these statutorily authorized methods, this NPRM seeks to completely redefine the nature of "last mile" Broadband transport. This rule change would create a de facto monopoly in "last mile" Broadband transport in many areas. This result would not "promote competition in the telecommunications market" under any stretch of the imagination. In CCC's view, the FCC is free to change the direction of national policy within the confines of TA96; however, creating new law out of whole cloth is not acceptable regardless of perceived urgency of the policy goals under consideration, especially when Broadband deployment is proceeding in a reasonable and timely basis.[3]

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[1] *See In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, Third Report, Released February 6, 2002.

[2] In order to consider forbearance, the Commission must weigh the competitive effect of such forbearance pursuant to 47 U.S.C. § 160(b) which states:
Competitive Effect to be Weighed. In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

[3] "In this Third Report, the Commission concludes its third inquiry into the availability of advanced telecommunications capability in the United States. Overall, we find that advanced telecommunications is being deployed to all Americans in a reasonable and timely manner. We are encouraged that the advanced

Section 706 grants to the "Commission and each State Commission with regulatory jurisdiction over telecommunications services" concurrent authority to promote or encourage the deployment of advanced telecommunications services. Pursuant to this section, the FCC cannot unilaterally preempt the states from exercising jurisdiction over the deployment of advanced telecommunications services. To the extent "last mile" Broadband transport is defined as an information service, the jurisdiction of State Commissions to regulate this area will be usurped. This is in direct contravention of the intent of Section 706.

Currently, CCC has arbitration cases pending before the Public Service Commission of the Commonwealth of Kentucky and before the Tennessee Regulatory Authority in which we are requesting Broadband transport as a UNE under the necessary and impair standard.[4] We intend to deliver local and long distance services with voice over Broadband (VoBB) technologies bundled with high-speed internet access. We believe strongly that the illusive "killer application" for which Broadband proponents have been searching is voice. One cannot open up a telecommunications magazine without reading an article on IP Centrex – a VoBB service. Services such as these will afford small businesses more telephone capabilities than are currently available on expensive PBX systems that only larger companies can afford. These VoBB services will better enable small businesses to compete with large businesses by providing increased functionality at lower cost. For the residential customer, VoBB can deliver 3 or 4 voice lines each with a different calling number, plus high-speed internet access, for less than the cost of one local line and dial-up service today. This will give the residential customers several lines that could be dedicated to their children or a home office. We urge the Commission to review the attached testimony in which we demonstrate how BellSouth is squashing competition through their conduct of placing barriers to CCC's entry into the VoBB business.

Kentucky has recently indicated a desire to continue its regulation over Broadband access:

> The [Kentucky] Commission notes the continuing debate regarding the extent of state and federal jurisdiction over advanced services and related Broadband telecommunications infrastructure. **We hereby advise both the FCC and**

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services market continues to grow, and that the availability of and subscribership to advanced telecommunications has increased significantly. We also conclude that that although investment trends have slowed recently, investment in infrastructure for advanced telecommunications remains strong." *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket 98-146, Third Report, paragraph 1, Released February 6, 2002.

[4] *Cinergy Communications Company – BellSouth Telecommunications, Inc. Arbitration*; Case No. 2001-432 before the Kentucky Public Service Commission. *See Also Petition of Cinergy Communications Company for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*; Docket No. 01-00987 before the Tennessee Regulatory Authority.

BellSouth of our plans to continue reviewing this quintessential telecommunications issue and actively pursing a policy that promotes statewide deployment of advanced services while offering CLECs a reasonable opportunity to compete. Non-discriminatory access to the necessary network components for the provisioning of advanced services will be an ongoing focus of this Commission. We continue to hold that UNEs will prove to be an important and efficient form of competition, especially for semi-rural states like Kentucky.[5] (emphasis supplied)

Kentucky reasonably believes that it has jurisdiction in this area and the proposed rulemaking will only commence a struggle for jurisdiction. The Florida Public Service Commission and the California Public Service Commission have both recently found inherent jurisdiction to regulate Broadband access.[6] Other states are coming to the same conclusion and we can expect to see similar decisions in the weeks and months to come. Ultimately, the power struggle which will result from this rulemaking is not in the best interest of consumers or the economy as this issue will be tied up in the courts for years to come. The resulting uncertainty will only further constrain capital markets and prohibit competitive investment, ultimately leading to remonopolization of local voice by the Bell Operating Companies.

CCC respectfully requests that the Commission defer any action on this NPRM to let the states develop policy in this area. The "last mile" is within the jurisdiction of the states. The states, along with cities, counties and municipalities, have granted easement rights of way over their respective properties so that companies can stretch copper or fiber over the "last mile". Therefore, these entities have a proprietary interest in what is carried over these easements. Moreover, a local VoBB telephone call does not cross state lines.

Each State is different and has unique requirements to service the needs of its citizens. A uniform national requirement denies States the ability to provide for the unique needs of their respective citizens, particularly in an area where the States have a proprietary interest. What is good policy in New York may have disastrous results in Kentucky. There is no "one-size-fits-all" solution to this multifaceted problem. TA96 envisioned just such a role for the State Commissions and the Commission should continue to recognize state sovereignty in this area.

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[5] In the Matter of Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, Advisory Opinion, Case Number 2001-00105, p. 14, April 26, 2002.

[6] *California ISP Assoc. v. Pacific Bell and SBC Advanced Solutions* (C.01-07-027); *Petition By Florida Digital Network, Inc. For Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 010098-TP

II. Voice over Broadband (VoBB) is a Telecommunications Service Subject to the Provisions of Section 251 of TA96.

Nowhere in the Wireline Broadband NPRM is reference made to VoBB. CCC has been beta testing IP Centrex, a VoBB service, for over four months and expects to deploy this product sometime in July or August of this year. This product is vastly superior to the current analog telephony used in today's businesses. It is so superior in functionality that we expect IP Centrex to eventually replace today's current analog telephony. If CLECs like CCC are denied access to unbundled elements necessary to furnish VoBB to their customers, the ILECs will eventually reestablish their monopolies over voice communications.

The Commission in the NPRM reaffirms that "the categories of 'telecommunications service' and 'information service' in the 1996 Act are mutually exclusive."[7] Therefore, to the extent VoBB is a telecommunications service it cannot be an information service. Under TA96, "the term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[8] "Telecommunications," as defined by TA96, means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[9] VoBB is offered directly to our customers for a fee. Also, the voice is transmitted between points specified by the caller by dialing the connecting telephone number. The voice is transmitted in real time and neither the form nor content of the voice transmission is altered. This is in contrast to information services such as internet access in which data is manipulated by computer processors.[10] Although VoBB is controlled by software, it is still a telecommunications service because the definition of information service specifically excludes computer processing for "the management of a telecommunications service."[11]

Voice is and has always been recognized as a telecommunications service regardless of the transport mechanism. Voice is currently converted to packets in the backbone of an ATM network and reassembled for delivery. This is fundamentally no different than the packetization of voice for transport across the "last mile" as in VoBB.

The FCC has not indicated in this NPRM whether Broadband transport necessary to provide VoBB will, like internet access, be defined as an information service. CCC believes that such a tortured definition would not stand up to legal scrutiny. Moreover, the Commission would effectively be defining all voice carried across ATM networks as

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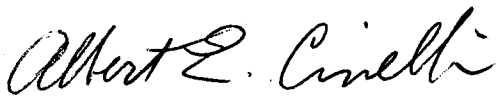
[7] Wireline Broadband NPRM, paragraph 14
[8] 47 U.S.C. § 153(46)
[9] 47 U.S.C. § 153(43)
[10] "The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and included electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20).
[11] 47 U.S.C. § 153(20)

information services. Therefore, the Commission must take VoBB into account as the exception that swallows the proposed rule.

To the extent Broadband transport becomes available for VoBB, would the FCC then propose to police this transport facility to prevent internet access? If so, does this not require more regulation and not less regulation? Also, is it good public policy to create a situation where assets cannot be used efficiently, thereby enabling the public to receive better services and more favorable prices?

Since VoBB is a telecommunications service, CLECs, including CCC, have a statutory right to avail themselves of the provisions of 251 of TA96. These rights specifically include the right to petition a State Commission for unbundled access to network elements based on an impairment in the ability to provide the telecommunications service the CLEC seeks to offer its customers.[12] The FCC cannot deprive CCC of this right by simply redefining the Broadband transport necessary for VoBB as an information service.

Respectfully submitted,



Albert E. Cinelli, Chairman and CEO
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May 3, 2002

[12] *See* 47 U.S.C. §251(c)(3) and 47 CFR § 51.317.

BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY

IN THE MATTER OF: PETITION OF CINERGY COMMUNICATIONS COMPANY FOR ARBITRATIONS OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO U.S.C. SECTION 252	)))))))	DOCKET NO. 2001-432

TESTIMONY OF AL CINELLI
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COUNSEL FOR CINERGY COMMUNICATIONS COMPANY

Q. What is your name and business address?

A. My name is Albert E. Cinelli. My business address is 8829 Bond St., Overland Park, Kansas 66214.

Q. Who do you work for?

A. I am the Chairman of Cinergy Communications Company (CCC) as well as the Chairman of CCC's parent company Q-Comm Corporation.

Q. What are your responsibilities as Chairman of CCC?

A. As Chairman of CCC I oversee the strategic direction of the company. I am involved with new product development and oversee our management team. The President, Chief Financial Officer, and General Counsel all report directly to me. I am also involved in the day-to-day business operations of the company and the decision-making in areas ranging from marketing and sales strategies, new product development, new market development, finance, human resources, customer care, and litigation.

Q. Please briefly outline your educational background and related experience.

A. I attended Lafayette College where I received a B.A. degree with a major in Political Science and a minor in Economics. After graduation, I was accepted to Columbia University Law School where I received a Juris Doctor. After graduation from law school, I served as legislative counsel and as a trial attorney for a railroad company in New York City. Thereafter, I accepted a position as Chief Legal Counsel for a company by

the name of Eltra Corporation. In 1967, I accepted a position as International General Counsel for American Home Products Corporation and I worked there for approximately nine years doing exclusively international corporate law. In 1976, I accepted a position as Vice President and General Counsel of Marion Laboratories in Kansas City, Missouri. I retired from the practice of law in 1984.

Q. How did CCC come to be?

A. After I retired from the practice of law, I formed a corporation which ultimately became Q-Comm Corporation, the parent company of CCC. In 1992 we purchased Quest Communications Corporation (QCC), a financially troubled company that provided operator services to the hotel/motel market. Within three months, we turned QCC into a profitable operation. QCC subsequently expanded its offerings to include resale of 1+ and calling card services.

In 1996, seeking an entrée into the facilities-based telecommunication business, we purchased Wright Businesses, Inc. (WBI). Founded in 1977, WBI was a Kentucky Corporation which operated primarily as a facilities-based long-distance carrier named Long Distance Management (LDM).

In 1998, we acquired Network WCS, an Evansville, IN-based Internet service provider offering service in Indiana and Kentucky. We merged

Network WCS and WBI to form Community Telephone Corporation (CTC). In November, 2000, Cinergy Corporation (NYSE:CIN), an electric utility company with its principal offices in Cincinnati, Ohio, made a substantial investment in Q-Comm and acquired 32.5% of its outstanding common stock. As part of that transaction, we were allowed to change CTC's name to Cinergy Communications Company.

In 1999, CCC's precursor began developing a long-haul fiber optic transmission business under the name Kentucky Data Link (KDL, www.kdlinc.com). Since that time, KDL has become a full-fledged sister company to CCC and has extended its 1,500 route-mile network to many cities in Kentucky, Indiana, Tennessee, and Ohio. CCC's local telecommunication services use KDL network capacity and facilities extensively in Kentucky. Exhibit A is a map of KDL's network.

Q. What is CCC's strategic vision and management philosophy?

A. CCC is a facilities-based total communication provider delivering innovative local, long distance, and Internet services to residential and business customers in Kentucky, Tennessee, and Indiana. By offering excellent customer service and a strong value proposition to its customers, CCC seeks to retain those customers and grow at a steady, sustainable pace.

CCC's associates, although not mentioned on the balance sheet, are its most important asset. In order to maximize the value of this resource, we structure jobs around the talents of each individual and encourage full participation in the business. We share financial performance information broadly and encourage two-way communication regarding company tactics and strategy.

CCC has an old-fashioned approach to accounting and finance. Businesses do not run on revenue, gross profit, or operating income – they pay their bills using free cash flow, and they justify their ongoing existences by producing bottom-line profits. CCC rejects the get-rich-quick gravity-defying thinking which created the dotcom and telecom bubbles. CCC's managers scrutinize company spending carefully and analyze prospective investments for internal rate of return, gross margin, months to payback, months to positive cash flow, and cash required. In an industry where debt-to-operating-income ratios often exceed 50:1, and CCC's conservative banker at Bank of America is willing to lend up to 3.25:1, CCC maintains an enviable 1.36:1 ratio.

In this economic recession, CCC has enjoyed record sales and record profits. CCC has weathered the storm of the telecommunications meltdown and is prepared to continue competing with other telecommunications companies for business in the state of Kentucky.

Q. Where are CCC's offices ?

A. In the state of Kentucky we have offices in Paducah, Owensboro, Bowling Green, Hopkinsville and Louisville. We also have offices in Evansville, Indiana; Nashville and Clarksville, Tennessee; and Overland Park, Kansas. CCC has 160 associates and overall Q-Comm has 225 associates.

Q. Who are CCC's customers?

A. Two-thirds of our current customers have fewer than 5 lines. Exhibit B is a chart showing our distribution of lines per customer. The majority of our customers demand telephone service and high-speed Internet access, but they do not have enough lines to support the cost of a DS1 (or T-1) line.

Q. What is the impact of this focus on smaller customers with respect to this proceeding?

Dial-up access is no longer sufficient for many of our customers. These customers want broadband Internet access, and we need DSL transport in order to connect them to our own Internet service. More and more of our customers are returning to BellSouth because of our inability to give them broadband Internet access.

I believe that the ability to deliver services to our customers via high-speed packet switching technologies is the most important issue facing CCC. We are committed to building out our own facilities to do just that, and our efforts to date demonstrate this quite clearly. However, we

currently find ourselves in a precarious position in Kentucky. BellSouth's rollout of ADSL service is having a tremendous impact on CCC's ability to obtain and keep customers, and this is hampering the deployment of our own facilities in Kentucky. Building facilities before we have a customer base to support them is cost prohibitive and foolish. Simply put, we are no longer able to compete with BellSouth on equal footing. As we will demonstrate in later testimony, BellSouth's monopolization of ADSL transport services has greatly impaired our ability to deliver telecommunication services to Kentucky customers – indeed, we will show that monopolization of ADSL transport is enabling BellSouth to remonopolize telecommunication services in general.

Q. Are there any other factors driving your desire to obtain Broadband access?

A. Yes. We have invested in technology that would give our customers the ability to have the same features as a PBX system in a large company from their small business or home. These services, generally referred to as IP Centrex services, require delivery via broadband packet switching transports. The functionality of IP Centrex is so powerful that it will render analog telephony obsolete.

Q. What would you like the Commission to order in this arbitration that would allow you to compete with BellSouth?

A. We are requesting access to unbundled packet switching as a UNE. UNE-P has allowed CCC to begin to build up a customer base sufficient to

support facilities. We need unbundled packet switching to maintain this customer base and also to deliver advanced features to small business and residential customers in Kentucky on a packaged basis that would result in substantial cost saving for our customers. We request that the Commission require BellSouth to deliver the packet switching UNE in the same fashion that BellSouth now provides its wholesale DSL service, but at TELRIC prices, because it is technically feasible and would not require any changes or delays.

Q. What will CCC look like five years from now?

A. CCC has been on a mission to build out our own facilities in Kentucky. To date we've spent many millions of dollars building infrastructure. Our desire is that we would have a high speed intercity fiber transport throughout the Commonwealth for the purpose of delivering telecommunication services. We have a vision of delivering IP Centrex services and other advanced telecommunication services all over Kentucky. I don't think we've even dreamed up the services we'll be offering in five years, but I do know that CCC wants to be in a position to be a telecommunication leader in the state – not because we have the largest market share, but because we have the best services.

Q. Is that the end of your testimony?

A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the parties listed below via U.S. Mail, postage prepaid on this the 7th day of March, 2002.

C. Kent Hatfield

C. Kent Hatfield

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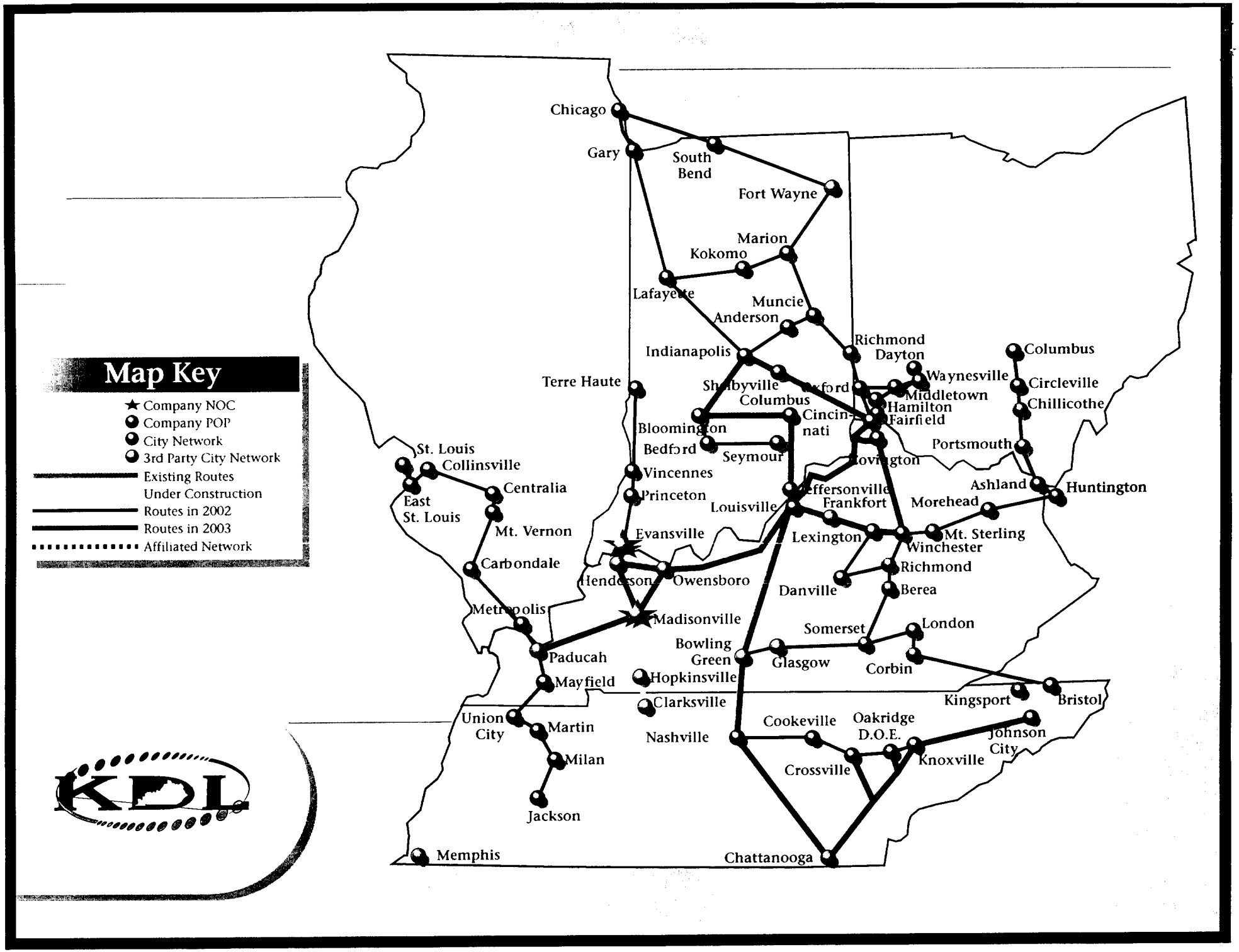
EXHIBIT "A"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City Network
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Richmond
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Circleville
Chillicothe
Middletown
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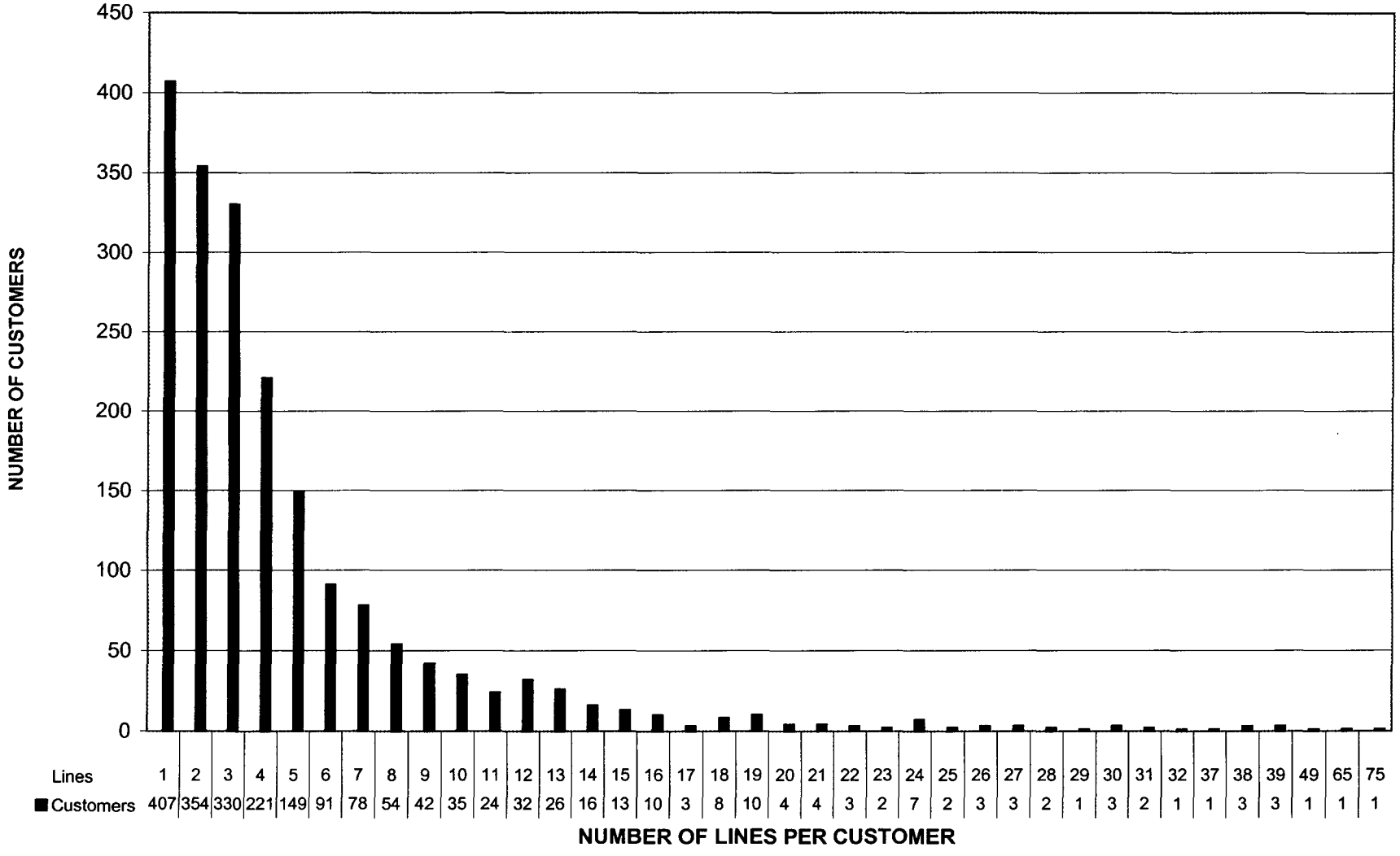
Terre Haute
Shelbyville
Columbus
Cincinnati
Bloomington
Bedford
Seymour
Portsmouth
Lovington
St. Louis
Collinsville
Vincennes
Centralia
Princeton
Ashland
Huntington
East St. Louis
Louisville
Frankfort
Morehead
Mt. Vernon
Evansville
Lexington
Mt. Sterling
Winchester
Carbondale
Richmond
Henderson
Owensboro
Danville
Berea
Metropolis
Madisonville
Somerset
London
Bowling Green
Glasgow
Corbin
Paducah
Hopkinsville
Mayfield
Clarksville
Kingsport
Bristol
Union City
Martin
Nashville
Cookeville
Oakridge D.O.E.
Johnson City
Milan
Crossville
Knoxville
Jackson
Memphis
Chattanooga

EXHIBIT "B"

DISTRIBUTION OF LINES PER CUSTOMER



BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY

IN THE MATTER OF: PETITION OF CINERGY COMMUNICATIONS COMPANY FOR ARBITRATIONS OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO U.S.C. SECTION 252	)))))))	DOCKET NO. 2001-432

TESTIMONY OF PAT HECK
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COUNSEL FOR CINERGY COMMUNICATIONS COMPANY

Q. Please state your name and business address.

A. My name is Pat Heck. My business address is 1419 Lloyd Expressway, Suite 101, Evansville, Indiana 47710.

Q. Who do you work for?

A. I am Chief Technology Officer for Cinergy Communications Company (CCC).

Q. What are your responsibilities as CTO of CCC?

A. I am responsible for the development and marketing of all residential services. On the commercial side, I oversee our data delivery infrastructure including our core data network services, hosting services, and new product development. I also oversee research and development of most telecommunication services.

Q. Please briefly outline your educational background and related experience.

A. I graduated from the University of Evansville in 1985 with a degree in Computer Science and earned a Masters Degree in Computer Science from the University of Virginia in 1988. I was accepted into the Ph.D. program at the University of Virginia and have completed all required courses. From 1991 to 1994 I served as an assistant professor at the University of Evansville and continued working on required research projects at the University of Virginia. In August of 1994 I, with the help of some Evansville area businessmen, started World Connection Services, a

successful residential and commercial Internet Service Provider where I served as the President from 1994 to 2000. Under my direction, World Connection Services grew from a small ISP serving Evansville into a regional ISP serving Southwestern Indiana and Western Kentucky with approximately 8,000 subscribers. In 1998, World Connection Services was acquired by Q-Comm Corporation, the parent company of CCC. In 2000, World Connection Services, then named Network WCS, was merged into CCC and I took on the responsibilities of the Chief Technology Officer.

Q. Have you previously testified in a regulatory proceeding before a state utility commission, the FCC or a hearing officer?

A. No.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to offer the factual basis for the Public Service Commission to order BellSouth to unbundle its high-speed packet switching services, including intralata transport service, so that CCC can offer important and necessary telecommunication services on a ubiquitous basis to the residential and small business markets in the state of Kentucky.

Q. Please provide a brief overview of CCC's position regarding the need for unbundled packet switching.

A. CCC seeks the ability to offer its customers a bundle of advanced telecommunication services and high-speed internet access on a single bill in order to effectively compete with BellSouth across the entire BellSouth service area in the state of Kentucky. BellSouth has been able to use its ADSL transport service to put CCC and other CLECs at a tremendous competitive disadvantage. Lack of unbundled access to BellSouth's ADSL transport service has materially impaired CCC's ability to provide telecommunication services in the state of Kentucky. Access to BellSouth's high-speed packet switching services, in accordance with applicable law, is essential for CCC to offer bundled and advanced telecommunication services on a ubiquitous basis in the state of Kentucky.

Q. What is ADSL?

A. DSL, short for *D*igital *S*ubscriber *L*ine, is a technology that enables high-speed data transmission over traditional copper loop facilities at rates far exceeding those typically achieved by traditional "dial-up" modems. At the customer premise end of the loop is a DSL modem and at the carrier facility end of the loop is a DSLAM ("Digital Subscriber Line Access Multiplexer") which is capable of serving many DSL connections simultaneously. To provide a viable DSL transmission service, the loop between the customer and the carrier's equipment must typically be shorter than 18,000 feet, free of bridged tap, load coils and repeaters, and free from interference caused by nearby fiber-based telecommunications. DSL can be used to transmit packet-switched voice as well as data. ADSL

is a cost-effective and popular form of DSL. ADSL is widely available in the BellSouth territory. According the BellSouth press releases, BellSouth's DSL service is now available to 70% of the households served by BellSouth.[1]

Q. Why should the Commission care whether CCC is able to provide these services to its customers and potential customers in Kentucky?

A. BellSouth is currently the only company offering a facilities-based bundled high speed data and local voice product to the residential and small business market in the state of Kentucky. This lack of a competitive alternative puts Kentucky citizens at a disadvantage. Competition promotes lower prices, more services and higher quality. Without robust competition, BellSouth will remonopolize the market for local telephone service. Once that occurs, there will be no incentive for BellSouth to invest in its infrastructure.

Q. What is the relevant background leading to CCC's request for unbundled packet switching?

A. CCC has been using BellSouth's UNE products in Kentucky for the purpose of building a customer base in order to justify the building of facilities. The most important of these UNE products has been the availability of UNE-P facilities (also known as the Unbundled Network

[1] BellSouth press release dated January 22, 2002 – see http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=38903

Element Platform) for the purpose of providing voice services to small businesses in the state of Kentucky. CCC has focused most of its efforts on providing competitive telecommunication services to small businesses in underserved areas. As CCC has developed a customer base in certain markets, CCC has undertaken the building of facilities. To date, CCC has built collocation facilities in Owensboro, Henderson, Madisonville, Bowling Green, Louisville, and Paducah and is beginning to utilize other UNE products, including unbundled copper loops and UNE DS1s, so that CCC is less dependent on the use of BellSouth's UNE-P facilities. Additionally, CCC, through our sister company Kentucky Data Link, has built its own long-haul fiber optic network linking many cities in Kentucky including Bowling Green, Louisville, Lexington, Madisonville, Owensboro, Paducah, Henderson, and Winchester. It remains CCC's intention to build collocation facilities in all of the Kentucky BellSouth Central Offices.

The introduction of UNE-P in Kentucky in the fall of 2000 enabled CCC to build a viable business plan to become a facilities-based telecommunications provider in the state of Kentucky, and CCC has been successful in moving forward with this business plan. However, BellSouth's recent introduction of high-speed Internet service via their ADSL transport service (from this point on referred to as ADSL Internet service) throughout their service area in the state and their refusal to allow

us to use this ADSL transport in a cost-effective manner has put CCC at a tremendous competitive disadvantage.

Q. Could you please provide an overview of how BellSouth provides ADSL service to its own customers?

A. To fully understand how BellSouth uses their ADSL Internet service to put CCC at a competitive disadvantage and materially impair CCC requires a thorough explanation of how BellSouth provides ADSL Internet service. BellSouth's FastAccess® ADSL Internet service is Internet service provided via BellSouth Telecommunication's federally tariffed ADSL transport product. This ADSL transport product is a high-speed packet switching service that is capable of operating across the same copper line that also carries POTS (Plain Old Telephone Service). The ADSL transport operates at a different frequency than POTS making it possible for high-speed packets to traverse across the copper line at the same time the POTS service is in use (e.g., a user can browse the Internet at the same time he is having a telephone conversation). The fact that ADSL uses the same copper as POTS is what makes the technology attractive from a cost perspective. In and of itself ADSL has no purpose other than serving as a high-speed transport service capable of carrying many different types of telecommunication services including local exchange service, long distance service, Internet service, and video services. DSL transport services have become a preferred mechanism for

delivering a variety of voice and data services because of its cost-effectiveness and reliability.

BellSouth has deployed DSLAMs (carrier-side equipment used to provide different types of DSL service including ADSL) in 80 Kentucky BellSouth Central Offices. Additionally, BellSouth has deployed DSLAMs in 138 RTs in Kentucky. The deployed DSLAMs are networked together via an ATM network that spans across each LATA. BellSouth uses its ADSL transport service to provide a connection from a customer premise out to the Internet. BellSouth markets their FastAccess ADSL Internet service through the same retail channels used for local exchange services. Customers of BellSouth's FastAccess ADSL Internet service are billed via their BellSouth telephone bill.

Q. Does BellSouth make this ADSL service available to competitors?

A. BellSouth does make its underlying ADSL packet switching transport service available to other carriers and markets this service mainly to independent Internet Service Providers (ISPs) under BellSouth's Wholesale ADSL program. An ISP seeking to use the wholesale ADSL transport service is required to connect to BellSouth's ATM network at one point within each LATA the ISP seeks to serve. BellSouth provides end-to-end packet switching between the end user and the ISP. BellSouth bills the ISP for the ADSL transport service and the ISP bills the end user for the services provided over the ADSL transport. The most common

service that is provided across the ADSL transport is Internet service, but I have personal knowledge of ISPs also providing other telecommunication services including such services as Data Virtual Private Networking, Voice Virtual Private Networking (which allows a multi-location company to route inter-office telephone calls across a public packet switching network), Network Monitoring, and Application Services.

Q. Couldn't CCC use this wholesale service to provide the telecommunications services it seeks to provide to its customers?

A. On the surface it would appear that CCC could use BellSouth's wholesale ADSL service as a way to deliver telecommunication services, including Internet service and advanced voice services, and then be able to compete effectively with BellSouth. In fact, CCC has attempted exactly that. However, BellSouth's intentionally restrictive policy on the deployment of ADSL has done just the opposite and has left CCC in an imperiled state. Specifically, BellSouth's policy is that it will only provision ADSL transport service over BellSouth voice lines. BellSouth voice lines include voice lines billed by BellSouth to end users and voice lines billed by CLECs, but provisioned under resale. BellSouth refuses to provision their ADSL transport service over lines provisioned under UNE-P. BellSouth's widespread deployment of ADSL coupled with this anticompetitive policy is absolutely a CLEC killer and I believe will lead to the remonopolization of voice services in BellSouth's Kentucky service area.

It is worth noting that CCC felt that it had received some relief from the BellSouth policy when the Commission released the Deaveraged Rates for Unbundled Network Elements Order on December 18, 2001.[2] On page 36, the Commission wrote:

> The Commission also makes clear in this Order that ordinarily combined UNEs must also be made available where line-splitting occurs. Line-splitting must be made available to all CLECs on a nondiscriminatory basis. Moreover, BellSouth may not discontinue the provision of line-splitting when a CLEC provides voice service through UNE-P, regardless of which xDSL provider is used.

CCC was hopeful that this would allow us to provision BellSouth's Wholesale ADSL service on UNE-P provisioned voice lines. BellSouth, however, believes that this ruling applies only to cases where the xDSL provider is someone other than BellSouth. BellSouth claims that if they are the provider of xDSL on the UNE-P line then line-sharing rules, as opposed to line-splitting rules, would apply. We disagree.

The FCC distinguished between line splitting and line sharing in the "Line Splitting Order."[3] Line sharing is limited to:

> ...those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the [competing] carrier seeks access. In other words, a competing carrier seeking to provide xDSL service using the unbundled high frequency

[2] Kentucky Public Service Commission Administrative Case No. 382

[3] *In the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Telecommunications Act of 1996, CC Docket Nos. 98-147,96-98, Third Report and Order,* FCC 01-26, (2001) ("Line Splitting Order).

portion of the loop can do so only if the same loop is used by the incumbent LEC to provide voice service to an end user.[4]

The obligations of the incumbent LEC are much broader under line splitting:

> ...independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop. This obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting.[5]

According to these definitions, any situation in which a CLEC provides the voice portion of the service is not line sharing; therefore it must be line splitting. We believe that BellSouth ignores the intent of the Commission by refusing to provide its wholesale ADSL service to ISPs when the voice line is converted to UNE-P. Moreover, BellSouth violates KRS 278.170 in that it subjects to "unreasonable prejudice or disadvantage" those customers wishing to subscribe to CCC's UNE-P voice service and gives an "unreasonable preference" to customers of BellSouth's own voice service.

Q. How is BellSouth's policy in this area anticompetitive?

[4] *Id.* at ¶17.

[5] *Id.* at ¶18.

A. Our experience over the past several months really demonstrates this quite clearly in three ways:

First, Facilities-based customers of CCC who call BellSouth and inquire about ADSL Internet service are informed that in order to receive the ADSL service they will need to return their local service to BellSouth. BellSouth then signs up the customer to a 24 or 36 month term "Key Customer" contract for local exchange service, effectively locking CCC out from serving the customer. Attached as Exhibit A is an example of a "Win Back" contract for one of CCC's former facilities-based small business customers, Alma Gentry. Alma Gentry was won back by BellSouth when she called to inquire about ADSL.

Second, BellSouth's anticompetitive policy greatly erodes CCC's profit margin on its current customers receiving local service via UNE-P. BellSouth's wholesale ADSL transport service is available to many ISPs and commonly CCC receives a request from an ISP, or from the customer directly, to reprovision local voice lines from UNE-P to local resale so that the ISP can provide Internet service to CCC's voice customer. This leaves CCC in the unenviable position of telling the customer that they can't have the ADSL Internet service from their ISP of choice, or requires CCC to move the lines to resale status. In the first case CCC is essentially telling the customer "No, you can't have Internet service because we'll make less

money – perhaps no money – on the voice service we're providing you." In the second case, CCC is essentially giving up all or nearly all of the gross profit made on the customer each month. Keep in mind that 40% of CCC's business customers have only one or two lines and 70% have five lines or fewer. It may seem on the surface that a two, three, or four line customer may not be so undesirable since only a single line contains the ADSL service, but call hunting on the lines means that CCC has to move all of the lines to resale.

Q. What is Hunting and why is it so important?

A. Hunting is used by most businesses with two or more lines and allows a company to publish a single number that can come in on any available line within the hunt group. If the first line in the hunt group is busy, then the call will hunt to the second line. If the second line is busy, then the incoming call will hunt to the third line. The caller will receive a busy signal only if all of the lines in the hunt group are busy. Hunting is an absolutely essential service for small businesses. Again, BellSouth's internal policy greatly damages competition for voice services. Although it is not a technical issue, BellSouth will not allow lines provisioned under UNE-P to be in the same hunt group as lines provisioned under resale. Since ADSL can only be provisioned on resale lines, then CCC must move every line of the customer in the hunt group to resale status – not a single line in the hunt group can remain provisioned under UNE-P. This

reduces CCC's profit margin to the point that the customer is no longer profitable.

Q. You mentioned there are three examples of how BellSouth's use of ADSL is anticompetitive, what is the third?

A. In addition to the first two problems, BellSouth's ADSL Internet service also prevents CCC from acquiring new customers. If a BellSouth customer who receives ADSL does move their local voice service to CCC's facilities, provisioned under UNE-P, then BellSouth terminates the customer's ADSL Internet service. Once a customer learns that they will lose their ADSL Internet service by moving to CCC's local voice service they are no longer willing to become a customer of CCC. Again, CCC's alternative is to provision these new lines under resale, but doing so is unprofitable to CCC.

The net effect of BellSouth's rapid deployment of ADSL Internet service and their anticompetitive policy is that BellSouth is remonopolizing the regulated voice market through attrition of competitive local exchange carriers who cannot compete due to the inability to sell a combination voice and high-speed Internet service.

Q. What is the difference between ADSL transport service and ADSL Internet service?

A. We believe that it is important to understand that ADSL is simply a telecommunications transport service. Anytime that someone talks about providing ADSL Internet service, they are talking about taking an ADSL transport service and using it to deliver Internet service. As stated earlier, Internet is only one of many different telecommunication and information services can be delivered via ADSL. Local voice is another telecommunication service that can be delivered via ADSL. In this respect, ADSL is performing the same function as a DS1 which is available to CCC on an unbundled basis to our medium and large business customers. In our strongest words we state that ADSL is not Internet service, but a high-speed transport service.

Q. Why is CCC asking for unbundled packet switching instead of unbundled ADSL Service?

A. CCC does seek to use BellSouth's ADSL network, but we strongly believe that the Public Service Commission should grant CCC access to all high-speed packet switching transport services deployed by BellSouth primarily because BellSouth is our principal competitor. BellSouth, because of its size and resources, could easily replace its ADSL network with a similar but different technology in a fairly short timeframe. In fact, BellSouth's competitive position towards CCC and other CLECs makes it likely that it would begin deploying another competing technology. Examples of viable competing technologies include other types of DSL (e.g., SDSL, IDSL)

and fixed wireless technologies (e.g., MMDS, LMDS). A narrow ruling on ADSL transport services is likely to be a short-lived victory for CCC.

Q. What is unbundled packet switching and what components should be included in unbundled packet switching?

A. The FCC defined packet switching in the UNE Remand Order as "the function of routing individual data units, or "packets," based on address or other routing information contained in the packets. The packet switching network element includes the necessary electronics (e.g. routers and DSLAMs)."[6] The FCC went on to specifically recognize that unbundled packet switching was a network element, stating: "We find that packet switching qualifies as a network element because it includes "all features, functions and capabilities. . . sufficient. . . for transmission, routing or other provision of a telecommunications service."[7] Unbundled packet switching should be an end-to-end solution that includes transport from the end user location all the way to a single meet point within each serving LATA. This model mirrors BellSouth's current wholesale ADSL transport service. BellSouth currently provides this service so there are no technical limitations or billing issues which would prevent the immediate implementation of this service as soon as it is ordered by the Commission.

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[6] *Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order,* 15 FCC Rcd. 3696, ¶304 (1999) ("UNE Remand Order).

[7] *Id.*

Additionally, requiring CCC, or any other CLEC, to interconnect with BellSouth in each Central Office serviced will prevent CCC from offering service on a ubiquitous and timely basis. It is imperative for ubiquitous deployment of advanced telecommunication services and data services that CCC be permitted to interconnect with BellSouth's packet switching network at a single meet point within each LATA. CCC would then be able to immediately begin offering services in LATA 464 (the Western parts of Kentucky) and would be able to offer services across the remainder of the BellSouth service area in Kentucky within 45 days of a favorable ruling.

Q. How will access to unbundled packet switching enable CCC to compete fairly, effectively and ubiquitously in the state of Kentucky?

A. With access to unbundled packet switching, CCC will be able to offer a combined voice and high-speed data access service ubiquitously and cost effectively to the residential and small business markets in the state of Kentucky. This bundling will compete with BellSouth's current offering. Prior to BellSouth's introduction of ADSL transport service, UNE-P was sufficient as a mechanism for aiding CCC in our business plan execution, ultimately leading to a build-out of our own facilities. Because BellSouth uses its ADSL transport service in anticompetitive ways, it is essential that the unbundling of packet switching give CCC instant ubiquity in the same way UNE-P gave CCC instant ubiquity for basic local voice services.

CCC will also roll out advanced telephony services such as IP Centrex which is not offered by BellSouth or any other competitive carrier in the state of Kentucky. CCC is already planning to roll-out these advanced telephony services in Indiana in August of this year. Access to unbundled packet switching, initially via BellSouth's ADSL network, is CCC's only viable option to roll out advanced telephony services on any scale that ensures CCC's success in the state of Kentucky. CCC would begin rolling out these same services in Kentucky during the third quarter of this year if unbundled packet switching is made available.

One of the key challenges of offering facilities-based voice services to small business and residential customers via UNE-P is "price squeeze." This situation arises when the TELRIC rate established for UNE-P local exchange service is near and often higher than the retail price of the retail service provided by BellSouth. BellSouth offers residential local exchange service for between $14.10 and $18.40 depending on the rate group. Features such as Call Waiting and Caller ID may add a few more dollars to the total. The TELRIC rate recently established in Administrative Case No. 382 for UNE-P local service is $10.79 in Danville, Louisville, Maysville, Owensboro, and Paducah – zone 1 localities. The TELRIC rate for UNE-P local voice is $15.52 in most other medium size localities such as Bowling Green, Hopkinsville, Frankfort,

the outlying areas surrounding Louisville and 20 other localities. However, it is $31.74 in Benton, Bedford, Cadiz, Princeton and 128 other cities. You do have a few CLECs selling residential UNE-P in the Zone 1 localities, but there isn't much of a business plan to offer local exchange service in Zone 2 or Zone 3 because of the "price squeeze," and the margins in Zone 1 are not sufficient to meet CCC's criteria for profitability. However, if CCC has access to a fairly priced unbundled packet switching, we believe we can offer a very compelling and competitive product that overcomes this "price squeeze" in the more than 150 localities listed as Zone 2 or Zone 3.

For purposes of constructing a business plan overview, let's assume the price for unbundled packet switching is $21.22. By bundling unbundled packet switching with a basic ADSL compatible loop ($12.87 in Zone 3), CCC has a viable business plan in zone 3 since recurring costs are $34.09. CCC can sell a bundled service consisting of local voice and high-speed internet access for somewhere between $55 and $65 and this compares very favorably to services BellSouth is able to offer residential customers. Once a sufficient number of customers are provisioned out of a single Central Office, CCC may install its own DSLAM to improve margins further.

Q. In your example, you used a price of $21.22 for unbundled packet switching. Could you explain why you believe this would be a fair interim price for BellSouth to charge for this UNE?

Arguing for a price of somewhere between $21 and $22 for unbundled packet switching is easy to justify. The current price to ISPs and CLECs for the BellSouth Telecommunications Wholesale ADSL residential-class service is $33. In order to deploy ADSL across a BellSouth voice line, BellSouth must install a splitter. The TELRIC monthly recurring charge for a Line Sharing Splitter is $7.43.[8] Subtracting $7.43 leaves $25.57. Applying the 17% resale discount to $25.57 leaves $21.22 – a conservative interim approach to determining a fair price for the ADSL service. CCC would expect to pay the splitter charge when using the UNE DSL service over a BellSouth local exchange line or a UNE-P provisioned local exchange line. We need the option of determining which option would suit the needs of each individual customer and do not want to be forced to pay for a splitter if one is not necessary.

Q. What options are available to CCC if the KPSC does not unbundle packet switching?

A. CCC has made the investment in the technology to provide advanced telephony services to its customers. From a practical standpoint, lack of

[8] Kentucky Public Service Commission Administrative Case No. 382

access to unbundled packet switching will force CCC to focus efforts in those markets where CCC can exploit this investment.

Q. Does CCC have access to unbundled packet switching as a UNE in any other markets in which it operates?

A. In the state of Indiana CCC already has access to unbundled packet switching via SBC Ameritech's UNE-D product. This product became available to CCC in the Fall of 2001 when the Indiana Utility Regulatory Commission ("IURC") finalized an arbitration between AT&T and SBC Ameritech which, in part, requires SBC Ameritech to offer a bundled UNE combo of voice and high-speed data transport referred to as UNE-D (for Unbundled Network Element – Digital platform). CCC recently adopted the relevant portion of that agreement and will soon be able to offer voice and high-speed data services to its customers over a single loop. This UNE-D combo consists of a 2 Wire Loop and Port with ATM Transport. It allows CCC to provide facilities-based voice via UNE-P and high-speed data access via DSL data transport as a UNE. This offering also gives CCC the ability to provide advanced telephony and data services to its residential and small customers on a ubiquitous basis in the state of Indiana. CCC pays $38 for the SBC Ameritech UNE-D product – a combination price that's still below what I've proposed for Kentucky (i.e., $21.22 for ADSL transport, $7.43 for the splitter, $10.79 for UNE-P voice in Zone 1 totals $39.44).

Q. What features will CCC be able to provide to the residential and small business market with IP Centrex if it is granted access to unbundled packet switching as a UNE?

A. CCC is currently testing advanced IP Centrex telephony services in the Evansville, Indiana market where CCC has access to a UNE DSL service similar to that which we are requesting in this arbitration. Personal services (available to residential and business customers) in this offering include Anonymous and Selective Call Rejection, Call Return, Call Waiting, Do Not Disturb, Flash Call Transfer, N-Way Calling, Last Number Redial, Speed-Dial, Selective Call Acceptance, Advanced Call Reporting (inbound and outbound), Simultaneous Ring (aggressive find-me/follow-me service), unified messaging (fax, email, voicemail), and multiple voice message notification options (stutter dial tone, paging, message waiting indicator). Business customers would also have access to many advanced group functions including Auto Attendant Services (Extension and Name Dialing/Transfer, Group Mailbox, and Name Recording/Playback), Account Codes, Authorization Codes, Call Center Support, Call Intercept, Configurable Extension Dialing, Configurable Feature Codes, Multiple Hunt Groups, Instant N-Way conferencing, and Loudspeaker paging. Additionally, all of these services can be managed and self-provisioned via the web. See Exhibit B for a complete list of the services that CCC is currently testing. Additionally, Exhibit C

demonstrates how CCC would deliver IP Centrex services over broadband connections.

Most of these services/features currently are available only with the purchase of very expensive telephony equipment and therefore are deployed almost exclusively by large commercial businesses. We believe that deploying these services to the small business market is economically viable and will enable small businesses in the state of Kentucky to remain competitive in a marketplace that increasingly favors large businesses over small. As stated earlier, we hope to roll out these services in the state of Kentucky during the third quarter of 2002.

Q. Could you provide the Commission an example of how this service might work for a small business owner.

A. Sure. Imagine a real estate agent who spends an equal amount of time in and out of the office. Most likely he has a business phone line and a cell phone. He has voicemail attached to each of these. One of the features he'll have available is Sim Ring (simultaneous ring). He can specify from a web portal that he'd like to have his cell phone ring in addition to his office phone whenever a client calls his office phone, but only between the hours of 7am and 10pm. So now when someone does call him between these hours, both his cell phone and office phone will ring. Whichever he picks up first is where the call is delivered. If he doesn't pick up either, the caller is dropped into the voicemail box associated with his office phone –

thus he doesn't have to worry about checking voicemail on two different voicemail systems any longer. When in the office he can turn off his cell phone and just use his office phone, but when he walks out the door he can turn on his cell phone – unless he doesn't want to be bothered.

The second feature that he can use to his benefit is Remote Office. Imagine he has a sick child and needs to work from home. From his web portal he can turn on Remote Office to signify that his home phone is now his office phone. Incoming calls get routed to his home phone – just like call forwarding -- but the handling of his out-bound calls is the attractive feature. Assuming he has an Internet connection, he can use his web portal to dial the call. Remote Office will turn and dial his home phone. Once he's picked up, Remote Office will then dial his destination. This has a couple of advantages. First, if the call is a long-distance call, the charges will be billed to his office phone instead of his home phone. Second, the Caller-ID information passed to the person he called will be his office phone number instead of his home phone number. To the person he called it looks like he's at the office. He doesn't have to worry about the person he called now having his home phone number – and perhaps calling it another day when he really is in the office.

Q. Does the Kentucky Public Service Commission have the authority to establish an unbundled packet switching UNE as requested by CCC?

A. Yes. I am not an attorney, but it is my understanding that Section 251(d)(3) of the Telecommunications Act of 1996 expressly authorizes state commissions to establish additional unbundling obligations. In its order adopting the national list of UNEs, the FCC explicitly found that:

> section 251(d)(3) of the Communications Act grants state public utility commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order.[9]

The FCC was even more explicit regarding the ability of states to add UNEs that the FCC declined to place on the national list in its discussion of packet switching. The FCC found that it did not have a record before it that justified nationwide unbundling of the frame relay network element. The FCC went on to say, however, that CLECs

> are free to demonstrate to a state commission that lack of unbundled access to the incumbent's frame relay network element [a form of packet switching] impairs their ability to provide the services they seek to offer. A state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order.[10]

The *Line Sharing Order*, which sought to promote unbundled CLEC access to DSL, further encouraged state commissions "to impose

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[9] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 13 FCC Rcd 3696, ¶ 154 (1999) ("*FCC UNE Remand Order*").

[10] *Id.* ¶ 312.

additional, pro-competitive requirements consistent with the national framework established in this order."[11]

Q. Please explain the federal unbundling framework?

A. The federal unbundling framework has two basic layers – a list of national minimum network elements (that must be offered everywhere),[12] and a mechanism for States to require additional unbundling. Where a State requires additional unbundling under the authority of the federal Act, however, FCC rules require that certain standards be met.[13] Specifically, a State must conclude (for non-proprietary network elements)[14] that CLECs would be "impaired" without access to the network element in question.

Q. Has the FCC provided guidance as to what constitutes "impairment"?

A. Yes. Acting in response to the U.S. Supreme Court's remand of its initial interconnection rules, the FCC adopted rules to give greater definition to

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[11] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd. 20912, at ¶ 159 (1999)("Line Sharing Order")

[12] This list of federally mandated minimums is codified in the Code of Federal Regulations at 47 C.F.R. §51.319.

[13] 47 C.F.R. §51.317(b)(4) states: A state commission must comply with the standards set forth in this Sec. 51.317 when considering whether to require the unbundling of additional network elements.

[14] BellSouth has never claimed, to my knowledge, that any aspect of the local switching network element is proprietary.

what is meant by "impairment." Under this framework, impairment is defined as follows:

> A requesting carrier's ability to provide service is "impaired" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer. The Commission will consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's network element is available in such a manner that a requesting carrier can provide service using the alternative.[15]

Further, in judging whether alternatives (either self-provisioned or obtained from a third-party) are available to the entrant, States are directed to consider whether alternatives are "...available as a practical, economic, and operational matter:

> (i) Cost, including all costs that requesting carriers may incur when using the alternative element to provide the services it seeks to offer;
>
> (ii) Timeliness, including the time associated with entering a market as well as the time to expand service to more customers;
>
> (iii)
>
> (iv) Quality;
>
> (v) Ubiquity, including whether the alternatives are available ubiquitously;
>
> (vi) Impact on network operations."[16]

[15] 47 C.F.R. §51.317(b)(1), emphasis added.

[16] 47 C.F.R. §51.317(b)(2).

Q. Are there other factors that the Authority <u>may</u> consider when determining whether a particular network element should be offered in accordance with the federal Act?

A. Yes. The FCC also enumerated a number of other factors that a State may consider when conducting an unbundling review under the federal Act, including the following:

(i) Whether unbundling of a network element promotes the rapid introduction of competition;

(ii) Whether unbundling of a network element promotes facilities-based competition, investment, and innovation;

(iii) Whether unbundling of a network element promotes reduced regulation;

(iv) Whether unbundling of a network element provides certainty to requesting carriers regarding the availability of the element;

Q. Is CCC impaired under the standard you just outlined?

A. Yes. Lack of access to unbundled packet switching materially diminishes our ability to provide IP Centrex to residential and small business customers in Kentucky. CCC has invested in this technology and can provide a facilities-based, feature-rich product to its customers that BellSouth cannot offer at any price. CCC has also invested in the network and the back office operations necessary to support this service. CCC

only lacks a mechanism to bridge the "last mile" from its network to the customer. Without unbundled packet switching CCC cannot cost-effectively provide this service to the small business and residential markets.

In addition, CCC is impaired in providing traditional POTS service to its customers. Customers are demanding high-speed internet access and CCC cannot offer this to the small business and residential market without access to unbundled packet switching. BellSouth's anticompetitive policies preclude any other cost-effective alternatives and encourage the customer to switch back to BellSouth. Access to unbundled packet switching for internet access would allow CCC to bundle voice and high-speed Internet and offer the customer one bill in the same fashion that BellSouth currently bills its own customers. If CCC cannot offer bundled services on a single bill, we are simply not an attractive competitor to the BellSouth monopoly.

Q. Are there any alternatives available to CCC that would allow CCC to provide its IP Centrex service or a bundled service of voice and high speed Internet access to its customers?

A. No other viable option exists that will enable CCC to quickly, cost-effectively, and ubiquitously provide high-speed data services and other advanced voice services. CCC has looked at all available options. First, CCC has considered installing DSLAMs across BellSouth's Central

Offices and Remote Terminals. Second, CCC has considered partnering with a Data LEC ("DLEC"). Third, CCC has considered using BellSouth's UNE DS1 service. Fourth, CCC has considered using BellSouth's wholesale DSL product combined with BellSouth's resale local exchange services. None of these options enable CCC to provide high-speed data services and other advanced services ubiquitously in the state of Kentucky.

Q. Why is self-provisioning of DSLAMs not a viable option?

A. First, it is cost prohibitive. Installing DSLAMs in Central Offices and Remote Terminals without a customer base to support them is a business plan that is certain to fail. The cost of build-out and DSLAM installation will take a first-year investment of more than $12,000,000. Assuming that CCC installs 84 customers per month (approximately 1,000 per year) the operation does not achieve positive operational cash flow until the 23rd month and still leaves CCC with a loss of more than $783,000 after 8 years – even with nearly 100% of the DSLAM ports serving customers. This is such a poor business plan that were we to undertake this plan, the commission should then consider revoking our Certificate of Public Convenience and Necessity because we'll certainly just be one of the next CLEC's to file bankruptcy and create real problems for its customers.

The second problem is timeliness. CCC does not have enough experienced personnel, nor access to experienced personnel, sufficient to build out

more than 100 facilities in less than 1 year. Across all markets (Indiana, Kentucky, Tennessee, Ohio, Illinois), CCC is able to install approximately 24 ILEC collocations per year. If all resources were focused on BellSouth's territory in Kentucky, it would still take 3 to 4 years to complete the installations. By this time BellSouth would have effectively locked CCC out of the DSL market in most parts of the state of Kentucky.

The third problem is ubiquity. If it takes CCC 3 to 4 years to complete the DSLAM installations, our service would be a patchwork quilt in the interim, and we would not be able to effectively compete within our territory. Also, we would not be able to service our current customers who desire advanced services. If BellSouth is successful in winning back all of these customers during our build-out, there may be no customers left to build to.

Finally, the FCC has already determined that the collocation required to provide packet switching constitutes an impairment:

> "Collocating in incumbent LEC central offices imposes material costs and delays on a requesting carrier and materially diminishes a requesting carrier's ability to provide the services it seeks to offer. As discussed above, we identified the costs and delays associated with collocation as factors that impair a requesting carrier's ability to self-provision circuit switches to serve residential and business market [sic]. We see no reason to distinguish a requesting carrier's collocation-related costs and delays to provide circuit-switched services from those collocation costs and delays incurred by requesting carriers to provide packet switched services. These

costs and delays lead us to find that competitors are impaired in their ability to offer advanced services without access to incumbent LEC facilities.[17]

Q. Why is partnering with a DLEC not a viable option?

A. In the UNE Remand Order, the FCC relied quite heavily on the availability of DLECs such as Rhythms, Northpoint and Covad in refusing to unbundle packet switching at that time.[18] However, the FCC could not have foreseen the economic meltdown in the telecommunications industry that has occurred since the UNE Remand Order was released. All of the aforementioned DLECs have filed bankruptcy and only Covad has emerged intact. Although Covad offers some service in Louisville, CCC is not aware of any DLEC or any combination of DLECs with which we could partner in order to provide ubiquitous access in Kentucky.

Q. Why isn't UNE DS1 a viable option?

A. A UNE DS1 is the only UNE transport service currently available to CCC, and CCC uses DS1 service to provide voice and data services to our large and medium sized business customers. The Kentucky TELRIC pricing for UNE DS1 service in the state of Kentucky is too expensive to use as an option for serving residential and small businesses. The recurring costs for UNE DS1's in zones 1, 2, and 3 are $86, $114, and $297, respectively. In

[17] *Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order,* 15 FCC Rcd. 3696, ¶*309* (1999) ("UNE Remand Order).

[18] Id. at ¶ 307

order to provide service over a UNE DS1, CCC is required to collocate in the BellSouth Central Office which serves the customer. It would be impossible for CCC to collocate with BellSouth rapidly so that CCC could utilize UNE DS1 loops on a ubiquitous basis in CCC's territory. Even if CCC were collocated within each Central Office, it would be difficult to build a sound business case in zone 1 for serving small business and impossible to build a business case for serving residential customers. The cost of the zone 1 UNE DS1 loop itself is greater than what most residential customers and single-line small business customers currently pay for a combination of local exchange service and ADSL Internet service. CCC would be unable to offer a competitively priced product.

Q. You mentioned that you are currently able to provide voice and data services to your large and medium sized business customers using DS1. Isn't ADSL substantially similar in function to DS1?

A. Yes. The nuts and bolts of how the two work is quite different. However, in both cases we use these "pipes" to reach our customers. We are then able to provide services to our customers over these pipes. You can think of the advanced voice and data services we provide to our customers as water that is being sent down these large pipes.

Q. Why isn't BellSouth's wholesale ADSL transport service a viable option to unbundled packet switching as a UNE?

A. BellSouth's wholesale ADSL transport service just isn't a viable solution for residential and small businesses due to the requirement that the lines be

converted to resale as outlined earlier in my testimony. However, it may be worth looking at the detailed economics of this. CCC's primary customer base is residential and small businesses with four lines or fewer. The amount of gross profit generated in serving these customers with BellSouth's wholesale ADSL product combined with BellSouth's resale local exchange service is inadequate to cover CCC's operational expenses. A few examples will illustrate this.

CCC receives a 17% discount on resale service. BellSouth's retail rate for residential phone service is $14.10 which sets CCC's cost at $11.70. CCC pays $33 per month for wholesale ADSL. In addition to these costs, the utilization of the wholesale ADSL product requires a significant investment in equipment, DS3 connectivity to BellSouth in each LATA served, and available Internet bandwidth. If the capital costs are amortized over 5 years and the non-ADSL recurring expenses are amortized over 2,000 customers, this adds an additional $2.05 to the total cost. Assuming that CCC offered residential customers a combination of local exchange service plus ADSL internet access at a rate that was 10% below BellSouth's retail rate, the total price would be $57.65. The direct costs associated with providing the service would be $46.75. The gross profit would be $10.90 and the gross margin would be only 19%.

A typical two-line business customer yields similar unattractive results. Since generally both lines for the small business are in a common hunt group, both lines must be provisioned under resale. Two lines arranged in hunt retail for approximately $45 each and cost CCC $37.35 each. The ADSL loop remains $33, but the additional Internet bandwidth costs associated with business users raises the additional costs of providing ADSL by another $7.32. BellSouth's retail price for ADSL Internet access to small businesses is $79.95. Using the same logic we applied to the residential business case gives us a product that CCC sells for $152.96 and which has direct costs of $115.05. This yields $37.91 in gross profit and 25% in gross margin. The small profit margins generated in these two very typical examples are inadequate to cover CCC's other costs including billing, customer service, provisioning, sales, and marketing. This business plan makes it very difficult for CCC to generate enough cash to justify building new facilities.

Q. In addition to the federal rules, are there any rules specific to Kentucky that would support unbundled packet switching as a UNE?

A. Yes. KRS 278.170 provides that "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions." Based upon BellSouth's

tactics it seems to me that BellSouth has violated this rule. BellSouth is clearly attempting to remonopolize local dial tone by leveraging its unregulated ADSL service. BellSouth has already admitted in proceedings pending in Tennessee that it has illegally engaged in winback activities, which as I have previously said, often arise as a result of ADSL requests. The only remedy to this is the unbundling of packet switching.

Q. Have any other states ordered unbundled packet switching as a UNE?

A. As I stated earlier, CCC currently has access to UNE-D in the state of Indiana which gives us access to unbundled packet switching. We are also considering allocating resources to Illinois which has also recently created the broadband loop with packet switching functionality as a UNE.[19] In addition several other states, such as Florida, are considering this issue. The Florida staff recently determined that there should be an unbundled Broadband UNE in Florida. The Broadband UNE is substantially the same as the unbundled packet switching UNE requested by CCC. I have attached a copy of the Florida staff's Memorandum to my testimony as Exhibit D for the Commission's convenience.

[19] *See* Arbitration Decision on Rehearing, *In the Matter of Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain core Issues, et al.* Illinois Commerce Commission, Docket Nos. 00-0312 and 00-0313 (Illinois Commerce Commission, Feb. 15, 2001)("Illinois Pronto Arbitration Order"); see also *In the Matter of Illinois Bell Company Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Services,* Illinois Commerce Commission, Docket No. 00-0393, Order (Ill. Commerce Commission Mar. 14, 2001).

Q. Are there any jurisdictional issues that would prevent the KPSC from requiring the unbundling of packet switching as a UNE?

A. No. This is a purely local issue over which the KPSC has jurisdiction. The ADSL packet switching solution is no different for a small business than a DS1 is for a large business from a jurisdictional point of view. Both are merely transmission methods for voice calls. Likewise, both are capable of carrying data or connecting to the Internet.

This Commission has previously determined that "Although DSL is used to connect to the Internet, other uses for this service exist and will evolve as a broadband infrastructure is deployed throughout the Commonwealth."[20] CCC's IP Centrex product is precisely the type of non-Internet use that the Commission was predicting. The customer's voice is converted into packets and transported across DSL to CCC's facilities where CCC interconnects with the publicly switched telephone network (PSTN). The call originates and terminates within the Commonwealth of Kentucky. This is no different than an analog local call except that advanced technology is employed. Based upon this logic, this Commission previously determined that "The development of a broadband infrastructure and the resulting high-speed access market is critically important to Kentucky's economic future. Pursuant to KRS Chapter 278,

[20] Iglou v. BellSouth Telecommunications, Inc., Case No. 99-484

this agency has been entrusted with oversight of this [DSL] market, and we have specific authority to address complaints in regard to it and to ensure that unreasonable and discriminatory practices do not impede its development."[21]

Q. Could you briefly summarize for the Commission the overall policy reason why unbundled packet switching should be made available to CCC as a UNE?

A. BellSouth has engaged in a deliberate campaign to restrict CLECs from gaining broadband access over the copper loop. BellSouth knows that one day in the near future all voice will be carried in packets because this transmission method is much more efficient than analog and also provides more feature capabilities. Voice traffic is carried across the backbones of fiber networks in packets today. The only thing preventing packetized voice throughout the entire network today is the "last mile" over which BellSouth is trying to regain monopoly control. The purpose of the Telecommunications Act of 1996 was to open up the infrastructure that was a gift to BellSouth from the ratepayers. BellSouth has altered that legacy network for its own purposes and is profiting greatly from its ability to provide voice and high speed Internet access. If CCC is not allowed to provide IP Centrex to our customers over ADSL, CCC will be denied nondiscriminatory access to the transport infrastructure that should be open to all competitors. The Commission should remedy this situation

[21] Id.

and stimulate competition within Kentucky by ordering unbundled packet switching as a UNE as requested by CCC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the parties listed below via U.S. Mail, postage prepaid on this the 7th day of March, 2002.

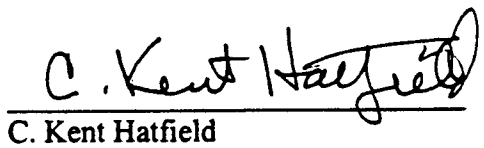

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EXHIBIT "A"

BELLSOUTH TELECOMMUNICATIONS

Win Back Program Subscriber Term Contract

The undersigned Subscriber desires to participate in the BellSouth Advantage Plus or Business Medallion Programs (the "Program"), and agrees to the following:

Subscriber is a former BellSouth customer within the last two years of enrollment and currently does not have service with BellSouth, wants to return to BellSouth, and anticipates having a minimum of Seventy dollars and a maximum of Twelve Thousand Five Hundred dollars in total billed BellSouth revenue* per month. Subscriber agrees to keep local services with BellSouth under its General Subscriber Services Tariff or Private Line Services Tariff for a minimum of twenty-four (24) or thirty-six (36) months from the enrollment date in the Program. The enrollment date shall be determined by the first billing cycle date in which Subscriber receives the discount off its BellSouth regulated charges as set forth in paragraph 1, below.

1. Subscriber agrees to the following term and discount (Check One):

Monthly BellSouth Total Billed Revenue*			
$70.00 - $12,500.00	Months 1 - 7	Months 8 - 15	Months 16 -24
( ) Twenty Four (24) Month	10%	15%	20%
	Months 1 -12	Months 13 -24	Months 25 - 36
(x) Thirty Six (36) Month	15%	20%	25%

* The total billed BellSouth revenue is based upon the applicable BellSouth tariffs and consists of end-user monthly total billed BellSouth account revenue at the customer's locations excluding: nonregulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.

2. For each month during which this Election is in effect, Subscriber will receive the discount associated with Subscriber's total billed BellSouth revenue* for that particular month in each state as approved by appropriate regulatory authority. If Subscriber's total billed BellSouth revenue* falls below the minimum revenue per month, discounts will not be applied for that customer. The applied discounts will appear as a credit in the Other Charges and Credits (OC&C) section of the Subscriber's bill. All business local service will continue after the Election term has expired, after which Subscriber agrees to pay full tariffed charges.

3. In the event Subscriber discontinues business local service with BellSouth prior to the expiration of the term, Subscriber shall pay to BellSouth the amount of discounted charges for its local services that the Subscriber had received as a result of Subscriber's participation in the Program. Subscriber is responsible for repayment of all discounts received associated with this Election. In addition to the reimbursement of the discounts, termination liability charges for individual services pursuant to tariff may apply.

4. In the event Subscriber is switched without authorization by another carrier for business local service, Subscriber must call its BellSouth Small Business Office to continue the Program once the improperly switched account has been returned to BellSouth.

5. In the event Subscriber changes service locations for business local service, Subscriber shall notify its BellSouth Small Business Office to advise of the change in service location.

6. This Election is subject to and controlled by the provisions of BellSouth's lawfully filed tariffs and promotions, including any changes therein as may be made from time to time.

Subscriber: Investment Planners Inc
(Full Legal Business Name)

By: Alma M Gentry
Authorized Signature

Name: Alma Gentry
Title: Exeuctive Director
(Additional Business Telephone Number (s))
Rep Name: D. William Wessels
Date: December 13, 2001
Fax this completed and signed form to:
502 582-2779

191 W professional park
(Business Address)
Bowling Green , KY 42104
(City/State Zip)
E-mail Address (optional)
270 393-7001
(Business Telephone number)

Telephone number for questions: 1 800 947-8398 ext 14740
CUID: BFDHMMH Version 031500
OR Mail to: D. William Wessels
Service Representative
534 Armory Pl
3w
Louisville, KY 40204

EXHIBIT "B"

CINERGY. COMMUNICATIONS

Advanced Voice Services

Planned September 2002

Group Administration

Web-based administration
Self-provisioning

Group Services

Auto Attendant

- Extension & Name Dialing/Transfer
- Group Mailbox
- Name Recording & Playback

Group Services

- Account Codes
- Authorization Codes
- Call Capacity Management
- Call Center Support
- Call Intercept
- Calling Group ID Delivery
- Calling Plans
- Incoming, Outgoing, Fwd/Transferred
- Configurable Extension Dialing
- Configurable Feature Codes
- Device Inventory
- Hunt Groups
- Incoming/Outgoing Calling Plans
- Instant Conferencing (n-way)
- Instant Messaging & Presence Mgmt
- Loudspeaker Paging
- Series Completion
- Simultaneous Ring—Group
- Voice Messaging – Group

Personal Services

Web-based Call Management

- Dial, Answer, Release, Hold, Retrieve, Blind Transfer, Transfer with Consultation
- Three-Way Calling
- Calling Line ID Delivery
- Phone Lists -- Personal, Business Group, Recent Calls
- Outlook Integration

Personal Services

- Anonymous & Selective Call Rejection
- Call Forwarding -- Always, Busy, No Answer, Selective
- Call Notify
- Call Park & Call Pickup
- Call Return
- Call Waiting & Cancel Call Waiting
- Calling Line ID Blocking
- Distinctive & Priority Alert/Ringing
- Do Not Disturb
- Extension Dialing
- Flash Call Transfer
- Flash Three-Way Call
- IP Phone Support
- Last Number Redial
- Remote Office
- Selective Call Acceptance
- Simultaneous Ring, Advanced Follow-Me/Find-Me

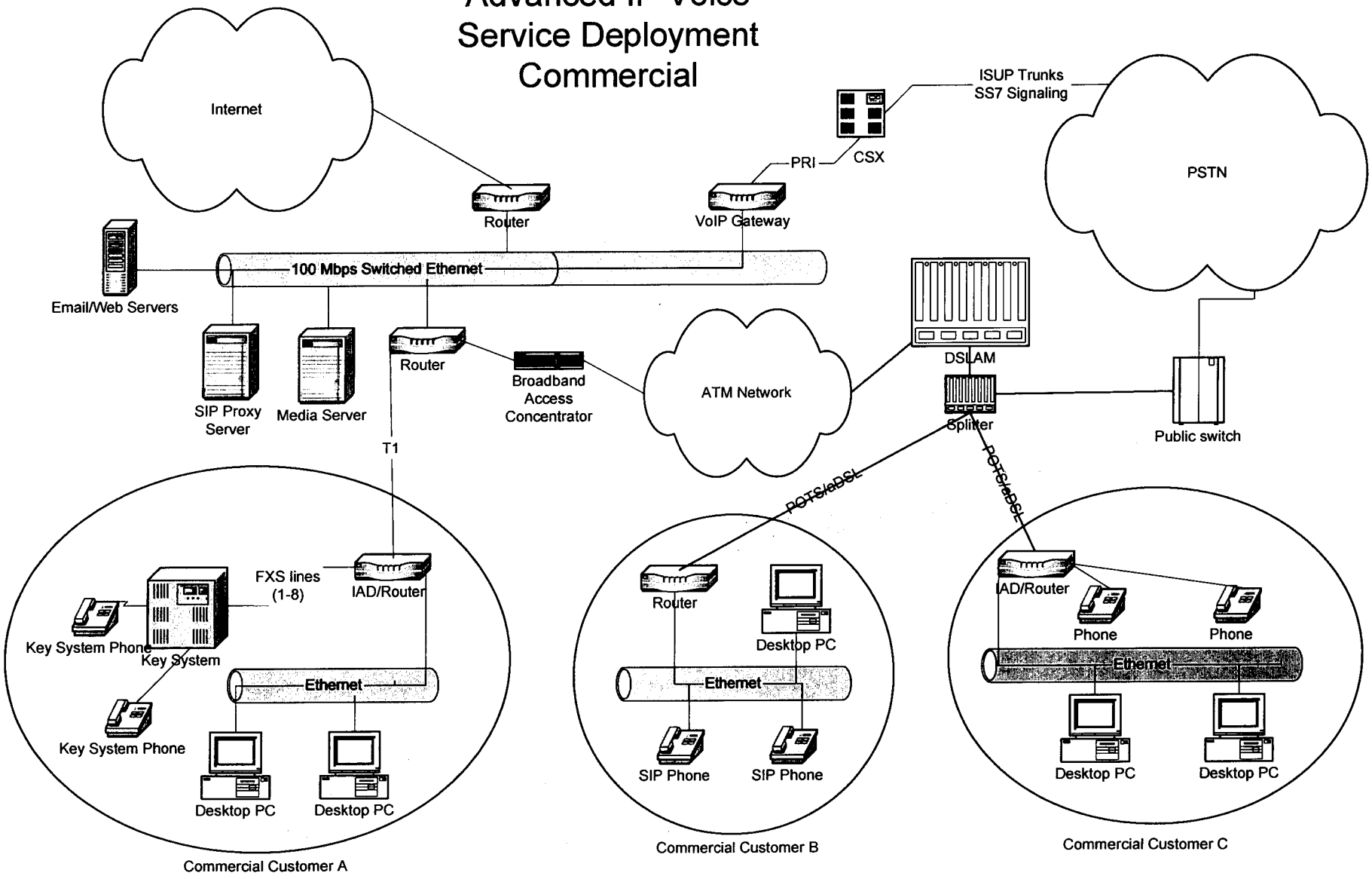
Voice Messaging

- Retrieval from E-Mail
- Retrieval from Phone
- Message Waiting Indicator
- Personal Greeting
- Voice Message Waiting Indication
- Voice Messaging Notification

EXHIBIT "C"

CINERGY. COMMUNICATIONS

Advanced IP Voice Service Deployment Commercial



BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY

IN THE MATTER OF: PETITION OF CINERGY COMMUNICATIONS COMPANY FOR ARBITRATIONS OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO U.S.C. SECTION 252	)))))))	DOCKET NO. 2001-432

TESTIMONY OF MARK ROULEAU
ON BEHALF OF CINERGY COMMUNICATIONS COMPANY

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COUNSEL FOR CINERGY COMMUNICATIONS COMPANY

Q. Please state your name and business address.

A. My name is Marc Rouleau. My business address is 1419 Lloyd Expressway, Suite 101, Evansville, Indiana 47710.

Q. Who do you work for?

A. I am Chief Operating Officer for Cinergy Communications Company (CCC).

Q. What are your responsibilities as COO of CCC?

A. The following CCC departments report up to me: Management Information Systems (MIS), Margin Assurance, Network Operations, Switchroom Systems, Customer Provisioning, Network Provisioning, Field Services, Project Management, and Network Support. MIS is responsible for the software development, maintenance and technical support of CCC's operational support systems including billing, network inventory, management reporting, order processing, and workflow management. Margin Assurance is responsible for reconciling costs to revenues in order to find and fix revenue leaks (e.g. unbilled services) and excessive costs (e.g. third-party circuits cancelled by the customer but not by CCC's carrier) in order to improve CCC's gross margin. Also reporting through Margin assurance are CCC's pricing, business case analysis, tariff management, customer billing, and carrier billing functions. Network Operations operates CCC's 7x24 network operations center (NOC). Switchroom Systems operates CCC's switching centers and

collocations. Customer Provisioning processes all customer service orders and handles the provisioning of non-dedicated long distance and all non-facilities-based local services. Network Provisioning designs and provisions private line, dedicated long distance, dedicated Internet, and facilities-based local circuits for customers as well as carrier interconnection trunking in support of facilities-based local and long distance services. Field Services operates CCC's teleconnect business (sales and service of business communication systems including key systems and PBXes) and provides general-purpose customer support whereever onsite technicians are needed. Project Management turns up complex customer services including private lines, dedicated long distance, dedicated Internet, and facilities-based local. Network Support manages CCC's internal computers and local area network servers.

Q. Please briefly outline your educational background and related experience.

A. I graduated from the University of Virginia in 1985 with a B.A. in General Studies and subsequently completed all courses required for a Masters Degree in Computer Science at UVa. From 1987 through 1993 I served as a Systems Engineer with the UVa Academic Computing Center. From 1993 through 1995 I served as the Director of Academic Computing and Network Services for the University of Evansville. Under my direction, UE established a campus-wide fiber network and associated data communication and Internet services. In 1995, I joined a small Internet

service provider named World Connection Services as its Vice-President of Engineering. In 1998, World Connection Services was acquired by Q-Comm Corporation, the parent company of CCC. After the merger, I served as Q-Comm's Chief Information Officer, and in the spring of 2001 I also became CCC's Chief Operating Officer.

Q. Have you previously testified in a regulatory proceeding before a state utility commission, the FCC or a hearing officer?

A. No, this is my first time.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony today is to provide the Commission an operational and technical context in which to make its decision on whether to unbundle packet switching. In addition, I will summarize CCC's investment in Kentucky and our desire to continue to commit resources in order to serve the citizens of the Commonwealth.

Q. Could you please provide a brief history of CCC's facilities-based CLEC operations in Kentucky?

A. Sure. In 1997, CCC, operating under the name Long Distance Management, or LDM, was a facilities-based interexchange carrier (IXC). LDM offered 1+, toll-free, and calling card long distance services using a Nortel DMS-250 switch located in its Madisonville, Kentucky switching center. In addition to the switch, LDM operated a comprehensive Feature Group D network allowing 1+ and toll-free call origination directly to its

switch from every local tandem switch (BellSouth, GTE, and the independents) in Kentucky. At that time, LDM also operated a 155 Mbps (three DS3s) microwave system from Paducah to Madisonville. LDM had approximately 15,000 commercial and residential customers, primarily in western Kentucky. That year, CCC constructed a fiber-optic route from Owensboro to Madisonville and established a 2.2 Gbps (OC-48, or 48 DS3s) link on that fiber. CCC also received facilities-based CLEC authorization in Kentucky.

In early 1998, CCC began reselling BellSouth's local voice services. CCC deemphasized local resale activity early on due to the thin resale margins and resulting operating losses. CCC eventually stopped accepting new resale customers in June of 1999. Over those 18 months, CCC acquired over 5,000 business and residential lines in western Kentucky.

In October of 1998, CCC installed a DTI DXC switch, established interconnection trunking with BellSouth, and began providing inbound service to collocation customers (ISPs, voicemail providers, paging companies, etc.) in its Madisonville switching center.

Also in 1998, CCC began investing heavily in its billing and operational support systems, which are the heart of any telecommunication company. Migration of its customer base from the small third-party provider it had

been using to its own system was the first project. In 1999, CCC completed the billing migration at a cost of several million dollars. The new billing system formed the core of CCC's new operational support system (OSS). CCC's in-house OSS development efforts continue to the present day. The current system includes workflow management which supports all of CCC's high-volume business processes, electronic document management, network design and inventory, switch configuration automation, order status and management, and extensive management reporting functions. CCC's core OSS development team includes eight software engineers.

In 1999, CCC began developing a long-haul fiber optic transmission business under the Kentucky Data Link (KDL, www.kdlinc.com) name. KDL connected Louisville, Lexington, Frankfort, Winchester, and Cincinnati to its Madisonville/Owensboro/Paducah system and provided services to carriers throughout the region. Since that time, KDL has become a full-fledged sister company to CCC and has extended its 1,500 route-mile network to many cities in Kentucky, Indiana, Tennessee, and Ohio. In Kentucky, KDL fiber connects Paducah, Madisonville, Henderson, Owensboro, Bowling Green, Louisville, Frankfort, Lexington, Winchester, and Covington. Hopkinsville is currently under construction. KDL's planned construction in 2002 will add routes through Glasgow and Danville to the network, and in 2003 KDL will connect Mayfield,

Somerset, London, Corbin, Berea, Richmond, Mt. Sterling, Morehead, and Ashland. CCC's local telecommunication services use KDL network capacity and facilities extensively in Kentucky.

Currently, Madisonville, Owensboro, and Henderson receive protected (diverse-path SONET ring) service. Protected service, which tolerates a single serious network failure (typically a fiber cut) without service interruption, is reliable enough to serve as a transport for local telecommunication service. Protected service allows CCC to achieve economies of scale by centralizing its local switches and serving modest concentrations of customers in multiple communities using a single switch.

KDL's development over the next two years should establish protected service for Louisville, Bowling Green, Hopkinsville, and Paducah (among other Kentucky cities), and CCC intends to offer service on its own facilities in those cities as they join diverse-path SONET rings.

Also in 1999, CCC received facilities-based CLEC authorization in Indiana, established a switching center in Evansville, Indiana, established interconnection trunking with Ameritech, and began providing inbound service to collocation customers in Evansville. CCC also completed collocations in two Evansville-based Ameritech central offices (COs) and

connected them via protected KDL transport service to its Evansville switching center. The Ameritech collocations include equipment to exploit two-wire HDSL-compatible loops (UNE-HDSL2s) as well as DS1 digital loops (UNE-DS1s).

Q. Can you explain the distinction between UNE-HDSL2s and UNE-DS1s?

A. Sure. A UNE-HDSL2 is a two-wire "dry" copper loop with a network interface device (NID – a passive wire termination point) on the customer premise side. By "dry", I mean that BellSouth attaches no electronics to the loop – it consists of two copper conductors stretching from a CCC customer NID to a CCC BellSouth collocation. CCC attaches UNE-HDSL2 loops at the customer location to a CCC-provided network interface unit (NIU – an HDSL2 modem) and at the CCC BellSouth collocation to a CCC-provided HDSL2 Digital Subscriber Line Access Multiplexer (DSLAM) port. Combined with these CCC-provided elements and services, a UNE-HDSL2 loop allows CCC to offer DS1-carried voice and data service to the customer. To support HDSL transmission service, the loop between the customer and the carrier's equipment must not exceed 12,000 feet in length and must be free of bridged taps, load coils and repeaters. The loop must be copper from end to end – areas served by remote terminals (RTs), which are connected to their COs by fiber, do not generally qualify for HDSL2.

UNE-DS1s, on the other hand, combine the dry copper loop and NID with a range of BellSouth-provided equipment and service: the NIU at the customer premise, any repeaters needed to compensate for long length, a DSLAM port at the RT or the CO, any required transport from an RT to a CO, and installation of all components including the NIU. UNE-DS1s exist because having CLECs climb into manholes and up poles to install DS1 repeaters and collocating in RTs to install HDSL DSLAMs is logistically and financially impractical.

Because BellSouth UNE-DS1 monthly recurring charges are much higher than those charged for UNE-HDSL2, the HDSL2 business case is superior even when one considers the higher upfront and recurring costs of providing service via HDSL2. Those costs include the NIU and its installation at the customer premise, the DSLAM port, and the recurring power charge required to support the power-hungry DSLAM. In the key collocations where CCC has invested in both options and focuses its sales efforts primarily, CCC uses UNE-DS1s only when no HDSL2 loop qualifies.

Q. Please continue with your brief history of the development of CCC's facilities-based local service operations in Kentucky.

A. In early 2000, CCC began offering its Superlink Plus facilities-based local and Internet access service to Evansville-area businesses via channel-grouped DS1 loops. A typical Superlink Plus product offering is 11 lines

of voice and 256 kbps of Internet access on 15 channels of a DS1 pipe. For transport, CCC uses HDSL UNE loops preferentially and UNE-DS1 loops when no dry copper loop qualifies for HDSL.

In December of 2000, CCC resumed sales of local lines in Kentucky because of the ability to provide facilities-based local service over the UNE Platform (UNE-P). Sales efforts to date have been successful (10,000 Kentucky lines in service as of March, 2002), and higher gross margins have produced positive operating income which allows CCC to continue to reinvest in facilities. Concentrations of customers sufficient to justify facilities-based investments have developed around several BellSouth serving wire centers because of the availability of UNE-P.

In late 2001, coincident with the establishment of protected transport linking Madisonville, Owensboro, and Henderson, CCC established UNE-HDSL2- and UNE-DS1-capable collocations in those cities. CCC's sister company, KDL, also built UNE-DS1-capable collocations in Lexington, Louisville, Bowling Green, and Paducah in support of its long-haul transport business. These KDL collocations provide CCC with UNE-DS1 customer access but will need augmentation to allow CCC to make use of UNE-HDSL2 loops.

Q. What does augmentation to provide access to the UNE-HDSL2 option entail?

A. Augmenting an existing UNE-DS1 collocation with UNE-HDSL2 capabilities is an expensive 90-day process. For example, a 400-pair augment would cost approximately $33,000. BellSouth charges would include $3,145 for the application fee, an estimated $2,000 for hourly engineering services, $8,760 for the cable records fees, and an estimated $11,000 for power augmentation. Additional costs include $1,500 for the cable itself, $2,000 for termination panels, and $5,000 for certified contractor labor to terminate the cables on both ends.

Q. Please continue with your history of the development of CCC's local facilities in Kentucky.

A. Also in 2001, CCC focused tightly on revenue assurance, cost minimization, and operational efficiency including business process reengineering. The resulting improvements have strengthened CCC's financial position and have improved its ability to deliver service on a large scale. Today CCC generates strongly positive cash flow and modest profits, and continues to invest in sales and infrastructure to improve service and grow revenue.

In January of this year, CCC brought its new CopperCom CSX 2100 CLASS 4/5 softswitch into operation. CCC connected the CSX to the new Madisonville, Owensboro, and Henderson collocations and is now preparing for the rollout of its own DS1-based local services in those cities.

Also this year, CCC began reselling Ameritech's network services on the UNE Platform in Indiana. Notably, CCC's Ameritech interconnection agreement provides CCC with access to loop/port combinations bundled with ADSL, DSLAM, and ATM transport (UNE-D). This UNE-D option allows CCC to compete effectively with Ameritech for small business and residential customers in the critical market for bundled voice and high-speed Internet access, so CCC is funneling significant resources into developing an Ameritech UNE-P customer base.

Another current CCC activity is the development of next-generation voice products based on the BroadWorks service delivery system from BroadSoft. BroadWorks is the foundation of CCC's upcoming "IP Centrex" offering, which updates traditional Centrex services with such media-oriented applications as voice mail, conferencing, and auto attendant, as well as end-user-configurable personal calling functions such as selective call forwarding and notification, call transfer, and dial-by-name.

BroadWorks voice services ride on Internet Protocol (IP) packets rather than traditional circuits. Time-division multiplexing is not required, so broadband packet-switching telecommunication services including ADSL are excellent BroadWorks carriers.

Q. How does CCC plan to nurture the investment it has made in Kentucky to this point?

A. Going forward, CCC's Kentucky strategy is to acquire customers throughout the state using UNE-P and then to migrate those customers to CCC facilities. As end office concentrations develop, CCC collocates in those end offices, establishes local interconnection trunking, and moves suitable customers to CCC-provided DS1 facilities.

Q. Does a DS1 solution work well for all of your customers?

A. No. CCC's costs allow it to provide DS1-based service competitively in Kentucky only to business customers with five or more local lines.

Q. Does CCC have plans for providing facilities-based services to the small business and residential market?

A. CCC needs a facilities-based solution for its customers with four and fewer lines. These smaller customers comprise two-thirds of CCC's base. Coupled with voice-over-IP (VoIP) technology, such broadband packet-switching services as ADSL are ideal transports for unified local, long distance, and Internet service.

Q. Why does CCC need an unbundled packet switching transport solution?

A. Just as CCC requires the flexibility of two DS1 transport options for its larger customers (i.e. UNE-HDSL2 and UNE-DS1) because of dry copper suitability and availability issues, so CCC needs two broadband transport

options for its residential and small business customers – CO collocation and unbundled packet switching.

One option, analogous to UNE-HDSL2, involves CO collocation, the installation of hundred-pair copper cables from the CO's main distribution frame to the collocation area, and the installation of DSLAM and remote loop testing equipment. This option offers better gross margins but requires more upfront investment. We want to be able to make this investment only after we have a sizable existing customer base being served by a particular CO.

Like UNE-HDSL2, the CO collocation option is not in any case a comprehensive solution allowing CCC to offer services based upon broadband packet-switching in timely and ubiquitous fashion to residential and small business customers. According to BellSouth's response to CCC's data requests, one-third of BellSouth's Kentucky access lines are served by RTs. RT-homed lines cannot be used by ADSL equipment in the central office; instead, the ADSL port must be installed in the RT.

Q. In that case, perhaps CCC should collocate in the BellSouth Kentucky RTs.

A. RT collocation to install ADSL equipment is logistically and financially impractical for CCC for two reasons,. First, CCC's FCC-inspired and fiscally prudent strategy of deploying equipment after building a customer

base prohibits speculative deployment of facilities. The failures of such "build it and they will come" DLECs as Bluestar, Rhythms, Northpoint, and Covad underscore the wisdom of this approach.

Second, RT collocation plays away from CCC's strengths. CCC's strategy is to leverage the long haul fiber network of its sister company, KDL, to aggregate its customers and serve them with a small number of centralized switches. This approach allows CCC to provide facilities-based services in areas of modest customer concentration. The approach works because KDL's network costs are covered by KDL's carrier customers; however, KDL's carrier customer base is not going to push KDL to build out to remote terminals. According to BellSouth, central offices average 6,357 lines apiece; remote terminals average 161 lines apiece. CCC simply cannot justify paying for interoffice transport in addition to the normal collocation costs in order to reach groups of potential customers that are one fortieth of the size of those reachable via CO collocations.

Incidentally, CCC is not alone in its belief in the impracticality of RT collocation in Kentucky – according to BellSouth, no CLEC has ever collocated in a BellSouth RT in Kentucky. BellSouth itself averages only 23 xDSL customers per xDSL-equipped RT.

Q. Please describe the unbundled packet-switching transport solution that you envision.

A. The second transport option needed by CCC in order to compete for residential and small business customers on an even footing with BellSouth is unbundled packet switching. Just as UNE-DS1 offers end-to-end DS1 access to larger customers by bundling NIU, NID, loops, repeaters, and CO equipment, so unbundled packet switching would combine NID, high-frequency portion of the loop, splitter, DSLAM port, and LATA-wide ATM transport to provide end-to-end packet access to the customer. In CCC's view, the ideal unbundled packet switching element would function like BellSouth's existing wholesale ADSL product, which BellSouth markets to ISPs.

CLECs wanting to offer the comprehensive, ubiquitous telecommunication service required to compete effectively with the ILEC must have UNE-DS1 and unbundled packet switching. Copper loops can be useful, but in many circumstances they cannot be used directly by the CLEC to provide DS1 or ADSL service. Just as DS1s can require repeaters, which are not available in unbundled form to CLECs, so ADSL can require DSLAMs to be located in RTs. RT collocations are almost as unthinkable for the fiscally responsible CLEC and wasteful overall as duplicating the fabled "last mile" of copper altogether.

Q. Under what circumstances would use of unbundled packet switching be appropriate?

A. CCC will use unbundled packet switching for transport of voice and data services to residential and small business customers in two scenarios. First, CCC will use unbundled packet switching whenever it encounters loop qualification problems in an ADSL-capable collocation. Second, unbundled packet switching will be an essential companion to CCC's UNE-P resale services in areas where a CCC collocation and supporting protected network are not yet in place.

Q. Please summarize your position.

A. CCC's current inability to combine unbundled packet switching with UNE-P voice services impairs it from providing ubiquitous, cost-effective telecommunication services in Kentucky. This impairment prevents CCC from developing the customer concentrations it needs to justify additional facilities-based investment in Kentucky. Continuation of this serious impairment will cause CCC to invest more in Indiana, where it has substantial network assets and a more appealing interconnection agreement.

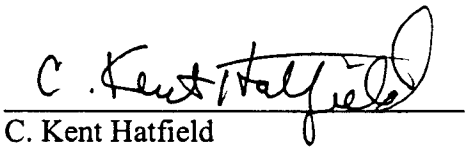
That said, CCC believes that it can deliver innovative services at attractive prices to the citizens and businesses of Kentucky. CCC's roots as well as five business offices are in Kentucky, and CCC wants to continue to grow with the state.

Q. Is that the end of your testimony?

A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed to the parties listed below via U.S. Mail, postage prepaid on this the 7th day of March, 2002.



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